IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 758 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MARSHADBHAI P PATEL SRYANA SURGICAL 857/3 GIDC MAKARPURA

Appearance:

1. Criminal Appeal No. 758 of 1991

Mr.A.Y.Kogje, learned A.P.P. for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/06/2003

ORAL JUDGEMENT

1. Heard Mr.A.Y.Kogje, learned A.P.P. for the appellant. The State of Gujarat has filed this appeal

for enhancement of sentence under Sec. 377 of the Code of Criminal Procedure against the judgment and order passed by the learned Chief Judicial Magistrate, Vadodara in Criminal Case no. 1253 of 1989 on 16.08.1991.

2. It is the case of the State that under Sec. 94 of the Factories Act, 1948 the learned Magistrate ought to have imposed topmost sentence as imposed under the Act. While imposing a fine of Rs.2,000/-, the Chief Judicial Magistrate has done injustice and therefore the sentence is required to be enhanced. In submission of Mr.Kogje, learned A.P.P. for the State, the accused has committed offence under sec. 94 of the Factories Act and in the said provision the fine is required to be imposed not less than Rs.10,000/- which may be extended to Rs. 2 lakhs. This being a second offence, no leniency should have been shown to the respondent-accused.

3. At the outset, it may be stated that the State filed appeal in 1991 but till date the respondent-accused is not served. Moreover, Sec. 94 of the Factories Act says that either he should be fined or convicted or both can be done. In this case, the Chief Judicial Magistrate, Vadodara has ordered fine only, on the admission made by the respondent-accused. It is true that he was sentenced to fine on 22.6.87, however, there is nothing on record to show what was the offence committed by the respondent-accused in the previous case. In the Act itself, it says that in case of any offence under Sec. 94 of the Factories Act, either fine upto Rs. 1 lakh to be ordered or sentenced, the learned Chief Judicial Magistrate, Vadodara on the admission made by the respondent-accused, awarded fine of Rs.2,000/- and in default imprisonment of 30 days. As per that order, the respondent-accused has paid the fine. In my view, there cannot be said to be any illegality in passing such order.

4. It may be mentioned at this stage that the order of conviction was passed on 16.8.91, We are in year 2003. Almost 12 years have passed. In my view, no fruitful purpose will be served if the matter is sent for service. Hence, this appeal is dismissed. The order passed by the learned Chief Judicial Magistrate, Vadodara in Criminal Case no. 1253 of 1989 on 16.8.91 is hereby confirmed.

(SHARAD D DAVE, J)

srilatha